



CITY OF NEWTON, MASSACHUSETTS

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TO: Ald. Brian Yates, Chairman, Zoning and Planning Committee
Board of Aldermen
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development
Juris Alksnitis, Chief Zoning Code Official

SUBJECT: **Supplemental information.**
Petition # 238-01 of ALD. MANSFIELD & SAMUELSON proposing to amend Section 30-1, to clarify the definition of "drive-in food service establishment"; to modify Section 30-11(d)(10) which allows by Special Permit an accessory drive-in to a food-related use in all business districts; and, to eliminate Section 30-11(g)(5) which allows "drive-in food service establishments" in Business 2 Districts by Special Permit.

CC: Board of Aldermen
Mayor David B. Cohen
Planning and Development Board
Philip B. Herr, Chair, Comprehensive Planning Advisory Committee
Martina T. Jackson, Chair, Board of License Commissioners
Alfred R. Guzzi, Jr., Administrative Director, Licensing Board
David Naparstek, Commissioner of Health and Human Services

The purpose of this memorandum is to provide supplemental information for use by the Zoning and Planning Committee in its deliberations on this subject. As previously noted, further study of this issue may be needed.

I. BACKGROUND

This petition was presented at the public hearing on February 15, 2005, and following a preliminary discussion, was scheduled for the Zoning and Planning Committee working session on March 28, 2005. As elapsed time since the initial public hearing has exceeded 90 days, the petition will need to be reheard. In the interim, the enclosed memorandum prepared by the Planning Department provides additional information for use by the Committee in its deliberations. As previously noted, further study may be needed with regard to certain aspects of the petition.

II ADDITIONAL INFORMATION – DRIVE-IN ESTABLISHMENTS

As previously discussed, the current definition in Section 30-1 establishes the “drive-in food service establishment” as a subcategory of “fast food establishment.” That is, a “drive-in” food establishment must first meet the definition of a “fast food” establishment. The Newton “drive-in food service establishment” definition is already narrow in scope as it relates only to “fast food” establishments. Since these definitions were introduced in 1974, few businesses have been addressed under this combination -- both are McDonald’s establishments. A survey of zoning regulations of nearby communities showed that Newton’s current definition of fast food establishments is in line with these other communities and in some cases is even more explicit.

At the public hearing, suggestions were made to consider adding site plan review criteria. While these criteria would not typically be set out in the relevant definitions, they might be incorporated in an appropriate regulatory section of the Zoning Ordinance. Information received from the American Planning Association indicates a range of site plan review criteria employed by various communities. These criteria, which address considerations including but not limited to: buffering, relationship to street, site area, noise, emissions, etc., seek to better manage impacts as well as to promote appropriate site design for drive-in establishments. The following table provides an overview of criteria categories in use in various communities.

Types of Criteria	Community
Buffers, screening, landscaping Separation from sensitive land uses Distance from residential use or district	Claremont, California Davis, California Sacramento, California San Jose, California
Separation from various land uses Distance from residential use or district Distance from another drive-in	Claremont, California Davis, California Sacramento, California San Jose, California
Relationship to street and external traffic Category of street; proximity to intersections Location of exits	Watertown, Michigan Davis, California Sacramento, California San Jose, California
Internal circulation Vehicle queuing; size of stacking area; overflow management Oversized vehicles	Watertown, Michigan, Seatac, Washington Davis, California Sacramento, California San Jose, California
Directional signage	Watertown, Michigan
Appropriate site area Minimum site area	Claremont, California
Architectural review – when required	Claremont, California
Noise mitigation	Claremont, California Davis, California Sacramento, California San Jose, California
Light and glare	Claremont, California Davis California
Emissions – carbon monoxide build-up, “tunneling”	Davis, California San Jose, California

For additional detail regarding traffic and circulation issues see *Attachment A – Compilation of Traffic Considerations*. Also see enclosed *Attachment B – Summary of Drive-in Facility Standards*, which covers a range of considerations, reflects a criterion-based approach as implemented in various other communities, and notes where Newton Zoning Ordinance provisions apply.

In addition, an extensive report entitled “*Drive-Through Facilities Review Standards*” prepared in 2001 by the Southeastern Regional Planning and Economic Development District in Massachusetts, discusses in some detail various issues common to drive-through facilities such as access, stacking lanes, architecture, setbacks and other concerns. This report is available from the Planning Department upon request.

III. REVIEW OF RECOMMENDATIONS

In the initial memorandum pertaining to this petition (see Memorandum prepared for the public hearing on 2/15/05), the Planning and Development Department recommended as follows:

A. Drive-in food service establishment definition.

Recommendation: Refine “fast food establishment” and “drive-in food service establishment” definitions.

As noted previously, the addition of selected characteristics should help to better define “fast food”, narrow the types of drive-in establishments possible within Newton and better distinguish “drive-in” type fast food establishments. This may be achieved by providing language within the parent definition, i.e. “fast food establishment”, increasing the existing enumerated characteristics (a), (b), and (c) by adding clarifying characteristics such as:

- formula fast food – establishment uses a mutually identifying name or symbol (logo, trademark, service mark, or other) shared by multiple similar establishments, and serves a prescribed menu (“formula”) that is substantially the same among the establishments sharing the mutually identifying name.
- food is paid for at a quick-order walk up counter or drive-by window prior to consumption.

In addition, it makes sense to further define the key aspects of a “drive-in food service” operation, then distinguish between such an operation being the primary or ancillary use. This may be achieved by first defining a “drive-in food service”, redefining “drive-in food service establishment”, and providing a definition for “accessory drive-in food service” as follows:

Drive-in food service: *A retail food operation selling and providing food utilizing a drive-by type window to serve customers while in their vehicles, based on orders typically placed by telephone, remote menu board system, or similar arrangement.*

Drive-in food service establishment: *A restaurant or fast food establishment where drive in food service is the primary operation, or where sales to motor vehicle customers constitute at least X% of total sales per month, averaged over a year.*

Accessory drive-in food service: *Drive-in food service which is ancillary to a restaurant or fast food establishment where sales to motor vehicle customers constitute Y% or less of total sales per month, averaged over a year.*

B. Section 30-11(d)(10) pertaining to "drive-in" type businesses.

Recommendation: Remove accessory "drive-in" operations as an option currently available to retail food establishments.

As previously noted, the Planning Department recommends further study of the impact of such a change on retail food-serving establishments in Newton prior to adopting this limitation. However, an initial survey of 14 eating establishments located in Newtonville indicated no drive-in or external take-out window service.

C. Eliminate "fast food" and "drive-in food service establishments" in the Business 2 zone.

Recommendation: Deny.

The Planning Department supports the concept raised at the public hearing, of introducing standards for "fast food" and "drive-in food service establishments" rather than eliminating such uses from the BU-2 zone. As previously noted, the proposed amendment would in effect nearly eliminate these uses altogether, since such a change would technically restrict them to the Limited Manufacturing District. At present, the only properties currently zoned LM in Newton are one parcel located off Florence St., and the office park located at Wells Avenue in the southern part of the City, which is also subject to a restrictive zoning covenant precluding fast food and drive-in establishments.

The Planning Department believes it makes sense to introduce standards, which may be employed as part of the special permit process, a process that already applies in the case of these types of establishments. The information provided in the enclosed **Attachment B – Summary of Drive-in Facility Standards**, covers a range of standards and options and reflects a criterion-based approach as implemented in various other communities. The Planning Department is prepared to work with the Zoning and Planning Committee in identifying standards best suited to Newton and to work with the Law Department toward the drafting of applicable ordinance changes.

ATTACHMENTS:

Attachment A – Compilation of Traffic Considerations.

Attachment B – Summary of Drive-In Facility Standards

ATTACHMENT A – COMPILATION OF TRAFFIC CONSIDERATIONS

Criterion	Standard
Relationship to street and external traffic	<p><u>Site location on:</u></p> <ul style="list-style-type: none"> ▪ Major street (# lanes) ▪ Highway <p><u>Proximity to intersections:</u></p> <ul style="list-style-type: none"> ▪ Not closer than ## ft. of signalized intersection ▪ Not closer than ## ft. to any other intersection <p><u>Access & exit placement:</u></p> <ul style="list-style-type: none"> ▪ Access drives max. 25 ft. wide ▪ 25 ft. from each other ▪ 25 ft. from alley or driveway <p><u>Performance requirements:</u></p> <ul style="list-style-type: none"> ▪ No increase in congestion ▪ No impediment to parking areas ▪ No impediment to pedestrian traffic ▪ No double parking on street ▪ No conflict with turning movements at intersections
Internal circulation	<p><u>Special items:</u></p> <ul style="list-style-type: none"> ▪ Management of oversize vehicles ▪ Emergency by-pass or exit <p><u>Performance requirements:</u></p> <ul style="list-style-type: none"> ▪ No impairment of parking function ▪ No impairment of parking circulation ▪ No overflow into street ▪ No impediment to trash storage ▪ No impediment to loading or service areas ▪ No impediment to drive-through operation
Drive-in/through operation	<p><u>Stacking lane design:</u></p> <ul style="list-style-type: none"> ▪ Min. 9 vehicle spaces ▪ Min. width – 11 ft. straight ▪ Min width – 12 ft on curve ▪ Curb separating lane and parking area <p><u>Configuration:</u></p> <ul style="list-style-type: none"> ▪ one window operation: 1 sp at window; 8 prior ▪ transaction station & window operation: <ul style="list-style-type: none"> 4 sp prior to station; 4 sp prior to window 1 sp at window. <p><u>Overflow management options:</u></p> <ul style="list-style-type: none"> ▪ Internal – additional stacking capacity – 50% to 100% of stacking area

Attachment B

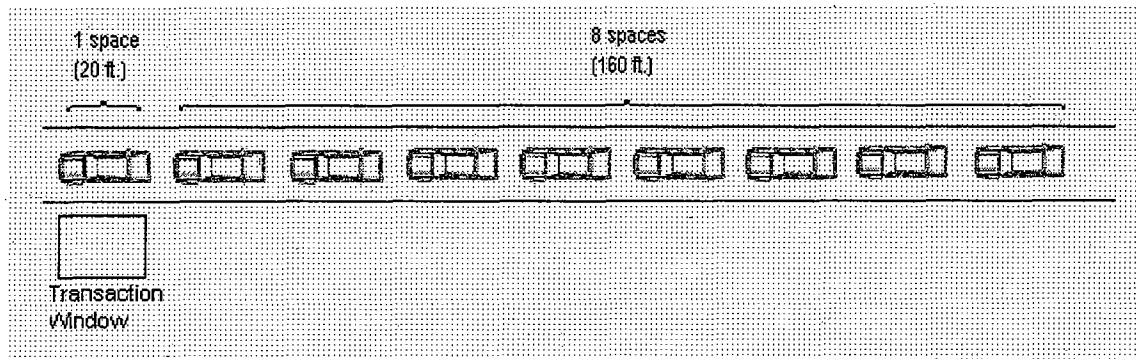
Summary of Drive-in Facility Standards

Derived from City Ordinances of Various Cities

Criterion	Limitation	Comment	Newton Zoning Ordinance	
			Section	Notes
Site Location				
From residential use	Minimum 300 ft.			
From transit thoroughfares and stations	Minimum 1000 ft.			
From another drive-through facility	Minimum 500 ft.			
From a signalized intersection	Minimum 300 ft.			
From all other intersections	Minimum 75 ft.			
Street type	Minimum 2-lane, highway, collector, or arterial			
Site Dimensions				
Frontage	Minimum 250 ft.			
Depth	Minimum 200 ft.			
Site Area	Minimum 50,000 sq. ft.		30-15, table 3	10,000 sq. ft. minimum
Drive-Through Facility Area	Minimum 22,000 sq. ft.			
Stacking Lanes				
# of Stacking Lanes	Exactly 1 or 2			
Stacking Lane Width on Straight Portions	Exactly 11 ft.			
Stacking Lane Width on Curved Portions	Exactly 12 ft.			
Vehicle Space	Minimum 20 ft.			
Vehicle Spaces <i>per lane</i>	Exactly 9 spaces	(See attached diagram)		
Space between Lanes	Minimum 8 ft.	Markings, curb, or island must divide Lanes.		
Overflow	Minimum 50% of stacking lane	This will be at least 90 ft. Overflow cannot spill out directly onto street or circulation aisle of the parking lot.		
Overflow (if in direction of street)	Minimum 100% of stacking lane	This will be at least 180 ft.		

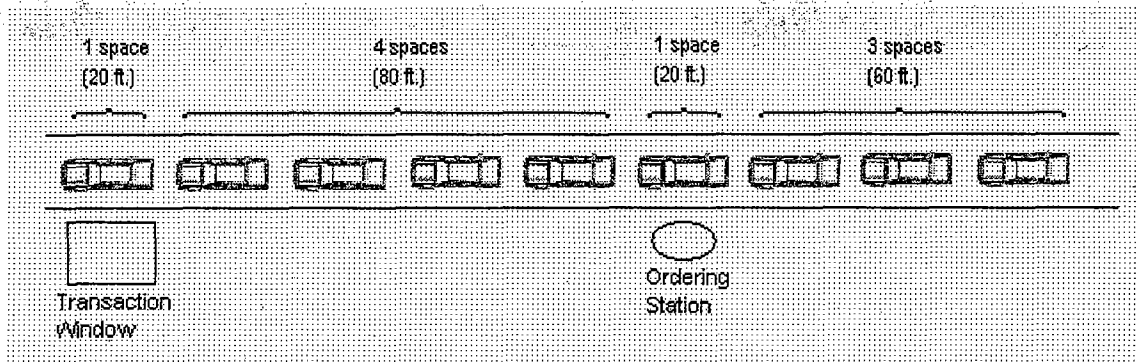
Criterion	Limitation	Comment	Newton Zoning Ordinance	
			Section	Notes
Access				
Width of Ent/Exit	Minimum 15 ft.		30-19(h)(4)(a)	Minimum 12 ft for one way and 20 ft for two way.
	Maximum 25 ft.		30-19(h)(4)(b)	Max 25 feet
Distance of Ent/Exit from other driveways	Minimum 25 ft.			
Distance of Ent/Exit from each other	Minimum 25 ft.			
Other				
Landscaping	Minimum 20% of site	Must obscure drive-through facility from residential properties and from street. Natural landscape should be preserved as much as possible.	30-19(l)	With more than 5 parking stalls, must be screened from abutting streets and properties. With more than 20 stalls, 5% of interior of parking facility must be landscaped. Natural landscape to be preserved as much as possible.
Menu Board	Maximum 1	Cannot obscure driver's view		
Intercom	Maximum 1	If intercom not integrated into Menu Board, it must be within 2 feet of the Menu Board. Intercom cannot carry advertisement(s) or logo(s)		
Menu Board Dimensions	Maximum 30 sq. ft. and 6 ft. tall		30-20(l)	Subject to requirements pertaining to free standing signs ad special permit
Intercom Dimensions	Maximum 4 ft. tall, 2 ft. wide			

Stacking Design if there is not a separate ordering station.



- 1 vehicle space at transaction window
- 8 vehicle spaces before transaction window

Stacking Design if there is a separate ordering station.



- 1 vehicle space at transaction window
- 4 vehicle spaces between transaction window and ordering station
- 1 vehicle at ordering station
- 3 vehicle spaces before ordering station

Additional Requirements

General	<ul style="list-style-type: none"> • Architecture must conform/harmonize with surrounding area. If drive-through facility is addition to pre-existing restaurant, it must match restaurant in design, style, material, roof height, etc. • Seating must be provided within the restaurant • Only open from 7:00am to 10:00 p.m. • Outdoor areas must use brick, cobblestone, or pavers, and have high quality furniture.
Relationship to Street	<ul style="list-style-type: none"> • No increase in congestion • No impediment to parking areas • No impediment to pedestrian traffic • Cannot cause double parking • No conflict with turning movements at intersections • Traffic impact study required (existing conditions, projected conditions, projected impact, and proposed mitigation).
Drive-through facility	<ul style="list-style-type: none"> • No impairment of parking function • No impairment of parking circulation • No impediment to trash storage • No impediment to loading or service areas • Management of oversized vehicles (either deny access or create longer, wider, taller stacking areas) • Emergency by-pass or exit • Separated from parking lot by a raised curb • No direct access from street • Integrated with site circulation
Required Signage	<ul style="list-style-type: none"> • Directing In and Out of lane • One-way • Pedestrian traffic around or through lanes • 10 mph in lanes
Light & Noise	<ul style="list-style-type: none"> • Must comply with light & noise control ordinances. (Sec. 30-19(j), Ord. X-142; 20-13 in Newton). • Speakers and vehicle traffic from drive-through facility must not be audible from adjacent properties. Landscaping or a sound-dampening wall may be necessary. • No loud music, radio broadcasting, etc.
Pollution	<ul style="list-style-type: none"> • Protect employees from emissions from idling cars • To greatest extent feasible provide biodegradable materials in packaging, utensils • Well-marked and easily accessible waste bins located in parking lot and at entrances and exits to premises. • Graffiti must be removed or painted over in 48 hours • Restaurant must daily collect litter originating from restaurant within a 300-foot radius.